

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
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COMMISSIONERS
JOE F. CHILDERS, CHAIR
WILLIAM D. DONAN
STEPHEN A. SANDERS

BRYON ALAN THOMPSON
GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF **FEBRUARY 10, 2011**: A MEETING OF THE MINE SAFETY REVIEW COMMISSION (HEREINAFTER "MSRC" OR "COMMISSION") WAS HELD IN THE CONFERENCE AND HEARING ROOM OF THE COMMISSION LOCATED AT 132 BRIGHTON PARK BLVD., FRANKFORT KY.

- ❑ **Members Present:** Chair and Commissioner Joe F. Childers, Commissioner William D. Donan and Commissioner Stephen A. Sanders were present. Also in attendance MSRC Hearing Officer and General Counsel Bryon Alan Thompson.
- ❑ The meeting was **called to order** at 9:00 a.m. EST
- ❑ **Declaration of a Quorum:** Upon the call of the meeting, Commissioner Childers made a motion that a quorum was present, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- ❑ **Welcome Guests:** Hon. Mike Haines, Energy and Environment Cabinet General Counsel was present and also staff attorneys for OGC; Smock, Pete Thompson, Russell and Richardson who were representing the Office of Mine Safety and Licensing. The Office of General Counsel was assisted by Kari Sutherland, Mary McCoy, and Tara New.
- ❑ The **minutes** for the meeting on **1/13/11** were discussed. Commissioner Childers made a motion for approval, which was seconded. The motion carried unanimously, and was ratified by the Chair.

□ **OMSL Motions for Sanctions, Permanent or one (1) year Revocation for failure to comply with terms of the Settlement Agreement & Final Order by MSRC resolving KRS 351.120(12) workplace suspension for alcohol and substance abuse:**

- 08-MSRC-249 Lloyd Collins Jr. III, 09-MSRC-231 Joe A Howard, 10-MSRC-170 Charles Fox, were called whereupon OMSL moved for **Continuance**. The matters were seconded as appropriate, carried unanimously and ratified by the Chair.
- 10-MSRC-119 Stephen Alan Ford, 08-MSRC-148 Michael A. Weir, 09-MSRC-011 Keith Adams, 09-MSRC-025 Ryan Hughes, 09-MSRC-074 Josh D. Hensley, 09-MSRC-132 Johnny Brown, 09-MSRC-230 Jimmy Cummings, 10-MSRC-169 Brian Higgins, were called and did not appear. OMSL moved to grant its motion for **permanent revocation**. The matter was seconded as to each as appropriate and approved unanimously and was ratified.
- 09-MSRC-280 Toney Adams, 10-MSRC-021 William Johnson, Jr. were called. OMSL moved to set these for **Show Cause** for March 10. The matters were seconded as appropriate, carried unanimously and ratified by the Chair.
- 09-MSRC-022 James A. Newsome was called and presented proof of compliance by submitting all missing tests. OMSL moved to **withdraw**. The matter was seconded as appropriate, carried unanimously and ratified by the Chair.
- 09-MSRC-032 Josh Rutherford, 10-MSRC-089 Randy R. Wood Jr., 10-MSRC-110 Blake A. Cabbage, 10-MSRC-165 Benjamin Roberts, 10-MSRC-167 Travis Bess, were called and wished to enter a **settlement agreement**. OMSL so moved. The matter was seconded as appropriate, carried unanimously and ratified by the Chair.
- 10-MSRC-014 Jeremy McCoy was called. The Commission determined that a **suspension** until completion of his treatment was appropriate. The matter was seconded as appropriate, carried unanimously and ratified by the Chair.

□ **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” revocations:**

- The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 11-MSRC-001 Jeff Hardin, 11-MSRC-002 Thomas R. Gobel, 11-MSRC-003 Dustin Napier, 11-MSRC-004 Jessie Hack, 11-MSRC-005 Mitchell T. Risner, 11-MSRC-006 James L. Hardrick, 11-MSRC-007 Billy D. Dingus, 11-MSRC-008 Gary Goins Jr., 11-MSRC-009 Chris Girtten, 11-MSRC-010 Robert Neace, 11-MSRC-011 Gregory Ousley, 11-MSRC-012 Dustin B. Cunningham, 11-MSRC-013 Chris Downey were each called in turn. Each Petitioner appeared and requested a **Settlement Agreement** to resolve the allegations. A motion was made to **grant**, each of their settlements which were seconded as appropriate. The motions carried unanimously, and were ratified by the Chair.
- 10-MSRC-166 James Boggs was called and OMSL moved for a **Continuance** for good cause shown. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 10-MSRC-206 Anthony M. Vanover, 10-MSRC-209 Gerald V. Frasure, 10-MSRC-211 Gregory L. Cornett were called and did not appear. OMSL moved for **revocation** for not less than one year. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 10-MSRC-214 Chris McLemore was called and did not appear. OMSL moved to **Show Cause**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” one year revocations:

- 11-MSRC-015 Calvin Cantrell was called and OMSL informed the Commission that it desired a **Settlement Agreement**. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.

- 11-MSRC-014 Kenneth D. Hayes, 11-MSRC-016 Shaun Aslinger, 11-MSRC-021 Anthony W. Marrs, 11-MSRC-022 Tyrell Sizemore, 11-MSRC-023 Jimmy Turner, 11-MSRC-024 Thomas G. Jarrell, 11-MSRC-025 Ronald Ward, 11-MSRC-026 Phillip D. Wilson were called but did not appear. OMSL moved for **revocation**. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.
- 11-MSRC-017 Michael A Lawson, 11-MSRC-018 Tim Hatfield, 11-MSRC-019 Michael Compton, 11-MSRC-020 Michael E Carver were called. OMSL moved for a **continuance**. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.

The 11:00 a.m. Docket for Reciprocity actions regarding Virginia Drug Sanctions:

None submitted for this meeting.

The 11:00 a.m. Docket for Motions to Modify prior Orders:

None submitted for this meeting.

11:00 a.m. Appeal of Penalty Assessment

None submitted for this meeting.

11:00 a.m. Petitions for an Order filed by OMSL in roof control cases:

None submitted for this meeting.

11:30 a.m. Pretrial: 10-MSRC-083 Waugh pre-trial was held.

The 1:00 p.m. Docket for “traditional” type cases:

- 10-MSRC-111 Viper was called and a hearing was held in part. The conclusion of the hearing was set for the afternoon of April 14.

Old Business

❑ Ratification of Final Order:

None scheduled for this meeting.

❑ **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting on Thursday March 10, 2011, and the possibility of one or more traditional type hearings.

❑ **Status Report & Abeyances;**

None submitted for this meeting.

❑ **Appeals**

- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 07-MSRC-088 **Jerry J. Maggard**, et al. Hon. Smock, counsel for OMSL stated the matter has been **submitted** for a ruling.

New Business

❑ **Office & Administrative;**

- ❑ The General Counsel advised that the **mileage** remains forty four (44) cents per mile.

❑ **Training**

- **Required Hearing Officer Training:** Next required Hearing Officer Training is in **June 24, 2011** at the KY History Center.
- ❑ **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the motions & settlements in the cases as above and then reconvened to issue its determinations.
- ❑ **Probable Cause Determinations**

None submitted for this meeting.

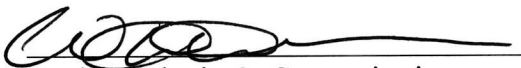
❑ **Settlement Agreements**

The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.

- ❑ **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.
- ❑ **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday March 10, 2011.**
- ❑ **Adjournment:** Commissioner Childers made a motion to adjourn, which was seconded by Commissioner Sanders. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Thursday March 10, 2011. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:



Acting Chair & Commission member
Mine Safety Review Commission

10 March 2011

Date